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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461
321	7590	07/23/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,934

Applicant(s)

NICHOLS ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13, 15 and 17-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 2-13, 15 and 17-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: to provide antecedent basis in the specification for the limitation regarding the flap being everywhere free of flush alignment with the pocket in the closed portion of the flap.

2. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-10, 13, 15 and 19-24 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782) and Joseph et al (6,015,045). In the reference of Jones there is provided a package at holder 10, including a flexible pocket 12a,12b,14,16,18, a top opening into the interior 20 of the pocket, a rectangular flap, for 22 for reclosably closing the opening, and a reclosable, re-openable fastener 24,25 which extends parallel to said edge. The opening of the flap allows insertion removal of the contents of the pocket. Closing of the flap prevents insertion an removal of the contents of the pocket.

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The contents are feminine care articles, such as sanitary napkins. The holder may hold more than one article (col. 1, lines 19-21). The contents is shown filling the pocket.

The distal edge of the flap is straight and the fastener strip is parallel to the distal edge.

Although the reference of Jones discloses that the flap fastener constitutes complementary interengageable strips sold under the trade name "Velcro," the reference of Joseph et al, at column 7, line 55 through column 8, line 6, suggests that interengageable fasteners (i.e. hook-and-loop material fasteners) and refastenable adhesive (e.g. pressure sensitive adhesive) are equivalents in the art for performing the function of reclosably fastening a flap closed on a flexible pocket for sanitary articles. These equivalents fasteners use similar actions to be fastened and unfastened. For unfastening them, one would use a separating force. For fastening them, one would use a pressing force. The taught adhesive (50) is shown in Figure 7, and does not include complementary portions. Accordingly it would have been obvious, in view of teaching of equivalence by Joseph et al, to have substituted reclosable adhesive for the hook-and-loop fastener assembly 24,25 of Jones.

Additionally, the reference of Joseph et al at 50 suggests making an adhesive fastener with substantially the entire width of the flap 30. This apparently provides for a full sealing of the opening of the package. Accordingly, it would have further been obvious in view of Joseph et al to have made the adhesive fastener as applied to Jones with a length cover in the entire width of the flap for sealing the entire opening.

Although the reference of Jones does not disclose individually wrapped sanitary napkins/feminine care articles, the reference of Larose et al

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suggests that packaged feminine care articles may be individually wrapped, see Figure 1 and also see the second text page of the specification under the heading "BUT DE L'INVENTION." Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles/sanitary napkins of Jones that are stored in the package.

Also the reference of Larose et al, at Figure 1, at the superior/upper pocket 30 thereof, and at the feminine care articles in the pocket, suggests that the pocket of an feminine care article holder may be filled with a stack of the articles in a manner such that the pocket will conform to a stack of articles therein. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1. Accordingly, it would have further been obvious in view of Larose et al to have filled the pocket of Jones et al with a stack of the individually packaged feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

Regarding claims 2, 3 and 5-7, to have spaced the adhesive from the distal edge by a particular distance or to have provided the strip of adhesive with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

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4. Claims 2, 3, 10, 11, 13, 14, 19 and 20 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al (cited by Applicant). The reference of Joseph et al discloses a package for feminine care articles (col. 3, lines 5-6 and lines 42-43). The package includes a pocket (Fig. 1) made of flexible material (col. 3, line 65 through col. 4, line 4), having a hollow interior (again Fig. 1) which contains the articles. The package may be shaped as disclosed by the patent to McLaughlin et al (4,997,613; incorporated by reference in the Joseph et al patent). See the column 5, lines 58-61. The flap of that incorporated reference is substantially rectangular.

The pocket includes an opening/aperture 14 extending into the hollow interior, permitting withdrawal of the articles (col. 3, lines 35-37) from the pocket. The opening 14 is closed by a flap/cover flap 30. The flap includes a open position (Fig. 1) in which the opening 14 is unobstructed by the flap. The flap also includes a closed position (col. 4, lines 62-65) in which the flap covers the opening, which would prevent article removal, as inherent from the size and shape of the flap 30 in comparison to the opening 14 in Figure 1.

A reclosable/refastenable adhesive closure 50 is provided on the flap for releasably fastening the flap in the closed position (col. 7, lines 50-52 and lines 55-58) over the exterior of the retaining band 44 and therefore over the exterior of the pocket (which includes the exterior of the retaining band). The adhesive may be applied to/positioned on the flap 30 or the retaining band 44 (col. 8, lines 7-8). The adhesive extends the entire width of the flap, as indicated in Figure 7.

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The adhesive is inherently spaced from the distal edge of the flap since the flap includes a finger tab 34 which forms a distal edge of the flap (see Fig. 1) and since the tab does not receive the refastenable adhesive (see Fig. 7).

Although it is not explicitly evident from the Joseph et al patent that the package/pocket will be substantially filled with the feminine articles so as to conform to a stack of the articles, the reference of Larose et al, at Figure 1, the superior/upper pocket 30 thereof and the feminine care articles therein, that the pocket is shown to conform to a stack of articles therein, which substantially fill the pocket. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1. Accordingly, it would have been obvious in view of Larose et al to have filled the pocket of Joseph et al with a stack of the feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

The reference of Larose et al also apparently suggests that packaged feminine care articles may be individually wrapped, see Figure 1 (also see the second text page of the specification, heading "BUT DE L'INVENTION"). Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles of Joseph et al that are stored in the package.

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Regarding claims 2 and 3, to have spaced the adhesive from the distal edge by a particular distance would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

Applicant's amendment of the claims, wherein there is now provided in claim 19 a limitation regarding the pocket being of unitary construction, does not patentably distinguish the claimed subject matter over the rejection on the combination of Joseph et al in view of Larose et al since the term "unitary" does not distinguish over the construction of the package of Joseph et al. The term "unitary" is broad enough to be defined as "of or pertaining to a unit or units" or "having the character of a unit" or "based on or characterized by unity" (Webster's II New Riverside University Dictionary, 1984.) and therefore does not require that the claimed pocket be made from a single piece. The Joseph et al pocket, although made by two pieces, including the element shown in Figure 2, and the retaining band 44, the pocket of the package may be said to be a unit and therefore to be *of or pertaining to a unit or units* or *to have the character of a unit*. Additionally, the pocket may be said to be *characterized by unity* since it is put together to make a unit.

5. Claims 2, 3, 10, 11, 13, 14 and 19-24 are finally rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al as applied to claim 2, 3, 10, 11, 13-15 or 19 above, and further in view of Jones (3,557,853). The reference of Jones at Figures 1 and 2 and at column 2, lines 60-67 teaches that a holder/flexible package for (10) a sanitary article/feminine care article, which includes a flap for closing the pocket

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opening of the package, may be made from a single piece and folded into configuration as shown in the drawings, including wherein the flap is not flush with the front wall (12a,12b) of the pocket. The advantage for making the package of one piece is that the package "can be produced in large numbers at a high rate of speed" (col. 2, line 67). Moreover, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893); See also *In re Heinrich*, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Accordingly, for all these reasons, it would have further been obvious in view of Jones to have made the package of Joseph et al in the manner of Jones and therefore from one piece, including wherein the flap is not flush with the front wall of the pocket.

6. Claim 11 is finally rejected under 35 U.S.C. . 103 as being unpatentable over Joseph et al (6,015,045) in view of Larose et al (Can. 2,109,782) and Jones et al as applied to claim 19 above, and further in view of McLaughlin et al (4,979,613). Broadly, a two sided tape is a tape with two sides.

The reference of McLaughlin et al at 14,16 (see Figs 1, 3 and 4) suggests that the reclosable fastener strips on a pocket flap may be in the form of two-sided tapes. These strips use high vinyl static to cause the adhesion. Moreover, the reference of Joseph et al teaches that the reclosable faster may use high static vinyl materials. Accordingly, in view of all of this it would have further been obvious to have used a high vinyl two-sided tape as the fastener 50 of Joseph et al.

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7. Claim 12 is finally rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that refastenable hot melt adhesive and its properties are well known. The advantages for hot melt adhesive is that it is applicable with heat and pressure between surfaces that cannot normally be heat sealed together. Accordingly, it would have been obvious in view of this to have made the reclosable fastener as a hot melt adhesive.

8. Claims 17 and 18 are finally rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Joseph et al, as modified by Larose, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Joseph provides for the feminine care articles disclosed.

9. Applicant's arguments filed 11 May 2004 have been fully considered but they are not persuasive. The term unitary is broad enough to cover a construction made from multiple pieces. Accordingly Applicant's limitation regarding a unitary pocket is not seen to distinguish over the package of Joseph et al.

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Additionally, the reference of Jones provides teaching in the art for one piece packaging.

It is known in the art to have a fastening flap on a one piece, flexible package for feminine care products which is attached to the outside of the pocket, as taught by Jones.

10. Claims 2-10, 13, 15 and 19-24 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782) and Joseph et al (6,015,045). In the reference of Jones there is provided a package at holder 10, including a flexible pocket 12a,12b,14,16,18, a top opening into the interior 20 of the pocket, a rectangular flap 22, for reclosably closing the opening, and a reclosable, re-openable fastener 24,25 which extends parallel to said edge. The opening of the flap allows insertion removal of the contents of the pocket. Closing of the flap prevents insertion and removal of the contents of the pocket.

The contents are feminine care articles, such as sanitary napkins. The holder may hold more than one article (col. 1, lines 19-21). The contents is shown filling the pocket.

The distal edge of the flap is straight and the fastener strip is parallel to the distal edge.

Although the reference of Jones discloses that the flap fastener constitutes complementary interengageable strips sold under the trade name "Velcro," the reference of Joseph et al, at column 7, line 55 through column 8, line 6, suggests that interengageable fasteners (i.e. hook-and-loop material fasteners) and refastenable adhesive (e.g. pressure sensitive adhesive) are equivalents in the art for performing the function of

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reclosably fastening a flap closed on a flexible pocket for sanitary articles. These equivalents fasteners use similar actions to be fastened and refastened. For unfastening them, one would use a separating force. For fastening them, one would use a pressing force. The taught adhesive (50) is shown in Figure 7, and does not include complementary portions. Accordingly it would have been obvious, in view of teaching of equivalence by Joseph et al, to have substituted reclosable adhesive for the hook-and-loop fastener assembly 24,25 of Jones.

Additionally, the reference of Joseph et al at 50 suggests making an adhesive fastener with substantially the entire width of the flap 30. This apparently provides for a full sealing of the opening of the package. Accordingly, it would have further been obvious in view of Joseph et al to have made the adhesive fastener as applied to Jones with a length cover in the entire width of the flap for sealing the entire opening.

Although the reference of Jones does not disclose individually wrapped sanitary napkins/feminine care articles, the reference of Larose et al suggests that packaged feminine care articles may be individually wrapped, see Figure 1 and also see the second text page of the specification under the heading "BUT DE L'INVENTION." Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles/sanitary napkins of Jones that are stored in the package.

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Also the reference of Larose et al, at Figure 1, at the superior/upper pocket 30 thereof, and at the feminine care articles in the pocket, suggests that the pocket of an feminine care article holder may be filled with a stack of the articles in a manner such that the pocket will conform to a stack of articles therein. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1.

Accordingly, it would have further been obvious in view of Larose et al to have filled the pocket of Jones et al with a stack of the individually packaged feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

Regarding claims 2, 3 and 5-7, to have spaced the adhesive from the distal edge by a particular distance or to have provided the strip of adhesive with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

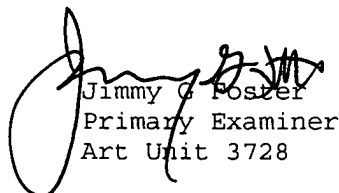
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
22 July 2004